



INTERIOR BOARD OF INDIAN APPEALS

Ute Distribution Corp. v. Phoenix Area Director, Bureau of Indian Affairs

27 IBIA 111 (01/05/1995)

Related Board case:

26 IBIA 291

27 IBIA 102

27 IBIA 103

27 IBIA 105



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

UTE DISTRIBUTION CORPORATION,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 95-12-A
PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 5, 1995

This is an appeal from a September 1, 1994, decision of the Phoenix Area Director, Bureau of Indian Affairs, declining to rescind approval of Ordinance 94-003 of the Ute Indian Tribe of the Uintah and Ouray Reservation. The ordinance requires the licensing of certain businesses on the reservation and imposes a business activity fee.

In its notice of appeal, appellant contended that the ordinance will adversely affect the revenues it receives from minerals it owns jointly with the Tribe. Further, it contended, inter alia, that the ordinance is "ill-conceived, reactionary and will ultimately spell economic disaster for the Uintah Basin" (Notice of Appeal at 3). Virtually all of the arguments made in appellant's notice of appeal were directed toward the wisdom of the ordinance.

It appeared from appellant's arguments that its appeal might be subject to the analysis employed in Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79 (1993). Therefore, the Board furnished appellant with a copy of the decision in Burlington and ordered it to show why its appeal should not be dismissed under the principles discussed in that case.

In its response, appellant contends that, because Congress has required joint management of the indivisible assets of the Tribe and appellant, the Tribe lacks the authority to enact an ordinance which would have an adverse impact on the revenues generated by those assets.

Appellant correctly notes that Congress has provided for joint management of certain assets, including "gas, oil, and mineral rights of every kind." 25 U.S.C. § 677i (1988). See also 25 CFR Part 217. Appellant points to no statutory provision, however, which purports to diminish the sovereign authority of the Tribe over its reservation.

In any event, appellant's contention concerns the authority of the Tribe to enact and enforce Ordinance 94-003. This issue is one which the Board has found should be addressed in the Tribal Court. Zinke & Trumbo, Ltd. v. Phoenix Area Director, 27 IBIA 105 (1995). Accordingly, for the

reasons discussed in that decision, the Board concludes that it should abstain from the merits of this appeal, in order to allow appellant to proceed promptly to Tribal Court. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed and dismissed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge